

Sealing of Juvenile Records - Additional Questions

Distributed to CJPOs on October 23, 2015

SEALING OF JUVENILE RECORDS

UPDATE

October 23, 2015

DPS Eligibility Notifications

In late August, the TJJD Legal Help Desk prepared resource information to give guidance to juvenile courts and juvenile probation departments on implementing the new automatic sealing process under House Bill 263 and Senate Bill 1707 (84th R.S.). This email is a follow-up to the implementation memo and contains answers to additional questions we have received since the August memo.

November 1st - Availability of DPS Sealing Notifications - The Department of Public Safety (DPS) is on target to launch the program to upload sealing eligibility notifications beginning on November 1, 2015. Thereafter, electronic sealing eligibility notices will be issued by DPS based upon daily record CCH searches to identify qualifying juvenile records. Juvenile courts and/or probation departments in each county will be able to retrieve the notifications by logging into the CJIS Site at <https://cch.txdps.state.tx.us>. When DPS activates the program on November 1st, electronic reports will be posted in the email inbox that corresponds to the user's ORI number and the notifications will be accessible for processing by the juvenile probation department or court. After logging on, the user will receive an email advising that a "new message" is available in their inbox. The ORI email message will contain instructions on how to download the notices along with DPS contact information.

Additional Questions

How do we determine eligibility for juveniles with CINS-Only History?

The records of juveniles whose most serious offense referred or adjudicated was conduct indicating a need for supervision (CINS) are not reported to DPS for inclusion in the Juvenile Justice Information System (JJIS). Eligibility notifications will not be generated for CINS conduct, so it will be important to remember the youth with CINS-only juvenile records. The juvenile probation department and/or juvenile court will need to develop a systematic way to identify juveniles with CINS-only history so that these records can also be sealed.

When notifying the prosecutor's office, do we send copies of the DPS notifications or just a list of the juveniles' names eligible for sealing?

The prosecutor will need the identifying information and history contained in the DPS eligibility notification as well as local verification information. Therefore, each department may want to develop a method that best conveys the information the prosecutor will need to evaluate whether or not to request a hearing.

What about notice to the prosecutor and juvenile?

Section 58.003(e) requires notice to be sent to the prosecutor *prior* to the time the record becomes eligible. The most practical approach, however, is to send the prosecutor's office the DPS eligibility notification upon completion of the local verification process. If the prosecutor has requested a hearing, the juvenile must also be provided with notice. If the juvenile's last known mailing address is incorrect

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and outdated, there will likely be obstacles to providing notice. Please consult with your local counsel to determine the best process for providing the juvenile legal notice of the hearing.

What if we receive an eligibility notification, but our local records show that the juvenile's records are not eligible for sealing? DPS will conduct an eligibility review of any notifications that your department has determined may not qualify (based on the CCH report) for sealing. Please send an email to angie.kendall@dps.texas.gov. Your feedback will also assist DPS in developing any needed programming modifications.

Can we seal the records of a juvenile who is under a continuing duty to register as a sex offender? No, section 58.003(n) of the Family Code prohibits sealing as long as the person is under a continuing obligation to register as a sex offender.

Does the court still have authority to seal early?

Under the provisions of HB 263/SB 1707, Section 58.003 specifies that an application is still required for offenses that became eligible prior to September 1st. The "automatic" sealing process eliminates the use of an application for offenses that became eligible after September 1st. However, a number of practical implications associated with session's amendments to Section 58.003, FC have been identified since the enactment of the bill. The prevailing interpretation has historically been that the time periods specified in statute relate to the time period in which the person is entitled to have records sealed as a matter of law -- as long as all other criteria are met. In the absence of a clear statutory prohibition in Section 58.003 of the Family Code, the court conceivably still has discretion to seal early, just as it could under prior law. This reading will preserve the court's discretion and its ability to address early sealing. It is likely that an "application" filed by the child's attorney or on the court's own motion would now be necessary to actually initiate the early sealing process.

What should the Clerk of Court do with the physical files and records after the juvenile court has issued a sealing order? The procedures that the court clerk must follow upon entry of a juvenile sealing order have not changed. Section 58.003(g) of the Family Code specifies that all records ordered to be sealed shall be sent to the court issuing the order. The court clerk should be familiar with and follow the procedural requirements of Rule 76a, Texas Rules of Civil Procedure and any other applicable local rules or procedures.

Is there a website where we can obtain a sample Sealing Order? The Forms Committee of the State Bar of Texas Juvenile Law Section is in the process updating and finalizing sample Juvenile Sealing Orders and related documents. The updated forms will be posted on the section website at www.juvenilelaw.org. **We will send out an email and a direct link as soon as it is posted to the Juvenile Law Section website.** It is recommended that all sample documents, forms and pleadings be reviewed by your local juvenile court prosecutor/counsel for legal sufficiency and adapted for your county's particular situation or drafting preferences.

Is TJJD going to update the brochure on Texas Juvenile Justice System Files and Records? Yes, TJJD has updated juvenile records brochure. The brochure *Texas Juvenile Justice System Files & Records: Understanding Sealing & Restricted Access* will be available soon for download in PDF on the Department's website on the Publications Page at www.tjjd.texas.gov. **An advanced copy is attached to this email.**

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We hope that this follow-up email will assist on fulfilling the requirements of this bill. We will keep you posted as we receive new information.

Please forward this email to staff designated to implement the requirements of this bill.



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